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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,491	12/10/2003	Jun Yamaguchi	03740/LH	7688
1933	7590	10/04/2004	EXAMINER	
FRISHAUF, HOLTZ, GOODMAN & CHICK, PC 767 THIRD AVENUE 25TH FLOOR NEW YORK, NY 10017-2023			LAUCHMAN, LAYLA G	
			ART UNIT	PAPER NUMBER
			2877	

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/733,491	<b>Applicant(s)</b> YAMAGUCHI ET AL.	
	<b>Examiner</b> L. G. Lauchman	<b>Art Unit</b> 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

The preliminary amendment filed 12/10/2003 has been entered.

#### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr et al (US 4,927,268), and further in view of Schulz et al (US 5,513,006).

Carr teaches a system for optical analysis of particles (see col. 3, lines 44-68, col. 2, lines 1-60) that convergently irradiates two specific wavelengths onto a sample using a converging lens 12, passing through a thermal lens generated by convergent radiation of the exciting light, comprising an optical fiber 10 for guiding the two specific wavelengths to the converging lens. The patent does not specifically call the wavelengths as exciting and detecting light; however, it mentions that the wavelengths could be introduced into the fiber by a suitable fiber coupler (see col. 3, lines 45-57). Schulz teaches a photo-thermal sensor for determining the concentration of a sample

by using an excitation light 4 and a probe light 3 for producing the light 21 (emitted by the excitation light source) and light 20 (emitted by the probe light source) (see Fig. 2). It would have been obvious to have two different light sources on the invention of Carr, since the two light sources would have produced two different wavelengths, as it is desired in the Carr's invention. The converging lens in the Carr's invention is a gradient index lens; the two wavelengths passing through the converging lens have different focal positions. Carr does not disclose moving means for moving the optical fiber, however it would have been obvious to move the fiber in order to measure the sample at different locations and make the measurements more efficient.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hiraga et al teach an optical method and control. Morris et al teach a photothermal desintometer.

Papers related to this application may be submitted to Technology Center 2800 by facsimile transmission. Papers should be faxed to TC 2877 via the PTO Fax Center located in CP4-4C23. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Center number is (703) 872-9306.

If the Applicant wishes to send a Fax dealing with either a Proposed Amendment or for discussion for a phone interview then the fax should:

- a) Contain either the statement "DRAFT" or "PROPOSED AMENDMENT" on the Fax Cover Sheet; and
- b) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L. G. Lauchman whose telephone number is (571) 272-

2418. The examiner's normal work schedule is 8:00am to 4:30pm (EST), Monday through Friday. If attempts to reach examiner by the telephone are unsuccessful, the examiner's supervisor Gregory J. Toatley, Jr. can be reached on (571) 272-2059, ext. 77.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC receptionist whose telephone number is (571) 272-1562.

A handwritten signature in black ink, appearing to read 'L. G. Lauchman', with a stylized, flowing script.

L. G. Lauchman  
Patent Examiner  
Art Unit 2877

September 22, 2004